

MAY 29 1979

MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. **78-1780**

GENTRY CROWELL, Secretary of State of the State of Tennessee; RAY BLANTON, Governor of the State of Tennessee and his successors in office; BROOKS McLEMORE, Attorney General of the State of Tennessee and his successors in office; DAVID COLLINS, Coordinator of Elections of the State of Tennessee; and JAMES E. HARPSTER, JACK C. SEATON, TOMMY POWELL, RICHARD HOLCOMB, and LYTLE LANDERS, Commissioners of the State Board of Elections,
Appellants,

vs.

RICHARD MADER, PATRICIA MAE NORTON, MARY RICHARDSON, and
MARSENA DARLENE WALKER,
Appellees.

JURISDICTIONAL STATEMENT FOR APPELLANT

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OPINIONS BELOW

The opinion of the three judge court dated January 15, 1975 is unreported and is reproduced herein as appendix A.

JURISDICTION

The opinion and order issued by the three judge court from which the appellants are appealing was entered on January 15, 1979. The notice of appeal was filed on February 14, 1979 and is reproduced herein as appendix B.

The jurisdiction of this court to review the instant case is conferred by 28 U.S.C. Section 1253.

STATUTE INVOLVED

Tennessee Code Annotated § 3-102 (as in effect in 1978):

"State senatorial districts—Residence requirements.—Until the next enumeration of qualified voters and apportionment of senators, the state senatorial districts shall be composed as follows:

(1) Senate district 1. Carter and Johnson Counties and that portion of Washington County which is not established as a portion of senate district No. 3, as set out hereinafter.

(2) Senate district 2. Sullivan County.

(3) Senate district 3. Greene, Hancock, Hawkins, and Unicoi Counties, and that portion of Washington County lying within the Sulphur Springs division and the Telford division, according to the 1970 federal census.

(4) Senate district 4. Claiborne, Cocke, Grainger, Hamblen, Jefferson and Union Counties.

(5) Senate district 5. Anderson and Roane Counties, and the following voting precincts of Knox County lying outside of the city of Knoxville: Corryton, Dante, Fort Sumter, Gibbs, Brickley, Heiskell, Hills, Pedigo, Halls, and Powell.

References to the Knox County voting precincts mean such voting precincts as they were delineated on May 1, 1973.

(6) Senate district 6. The following voting precincts of Knox County lying outside of the city of Knoxville: Huffs, Sunnyview, Ramsey, Riverdale, Dora Kennedy, Ellistown, Maloneyville, Ritta, Skaggstown, Carter, Thorngrove, Kings, Mount Olive, Sevier Homes, Vestal, Gap Creek, and Hopewell, and the following voting wards of the city of Knoxville: 1, 6, 7, East 11, Middle 11, West 11, 12, 13, Middle 14, East 14, East 15, West 15, South 16, North 16, East 17, West 17, FH 19, SH 19, 20, FH 25, 25 Vestal, East 26, West 26, 27, 28, 29, 30, 31, 32, 33 and 34.

References to the Knox County voting precincts and the voting wards of the city of Knoxville mean such voting precincts and voting wards as they were delineated on May 1, 1973.

(7) Senate district 7. The following voting precincts of Knox County lying outside the city of Knoxville: Lonas, Hardin Valley, Karns, Solway, Concord, Farragut, Cedar Bluff, Bluegrass Ball Camp, Rocky Hill and Shannondale; and the following voting wards of the city of Knoxville: 9 North 10, South 10, 18, 21, South 23, North 23, South 24, North 24, Seq. 24, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, North 50, South 50 and 51.

References to the Knox County voting precincts and the voting wards of the city of Knoxville mean such voting precincts and voting wards as they were delineated on May 1, 1973.

(8) Senate district 8. Blount, Loudon and Sevier Counties.

(9) Senate district 9. Bradley, McMinn, Monroe, and Polk Counties.

(10) Senate district 10. The following Hamilton County voting districts: Bakewell, Daisy, Dallas, Fairmount, Falling Water, Ganns, Grandview, Hixson, Lookout Mountain, Lupton City, Mowbrary, Red Bank/White Oak-1, Red Bank/White Oak-2, Red Bank/White Oak-3, Sale Creek, Signal Mountain, Soddy, Stuart Heights, Valdeau, Wauhatchie; and the following voting wards and precincts of the city of Chattanooga: The first ward, the first precinct of the seventh ward, second, third, fourth, fifth, and sixth wards, the second precinct of the seventh ward and the eighth, ninth, tenth, sixteenth, seventeenth, eighteenth, and nineteenth wards; and the fourth precinct of the twelfth ward.

(11) Senate district 11. The following Hamilton County voting districts: Amnicola, Apison, Birchwood, East Ridge-1, East Ridge-2, East Ridge-3, Harrison, Kingspoint, Meadowview, Ooltewah, Ridgeside, Snowhill, Tyner and Westview; and the following voting wards and precincts of the city of Chattanooga: The eleventh, thirteenth, fourteenth, fifteenth, twentieth, and twenty-five wards and the first, second, third, and fifth precincts of the twelfth ward.

(12) Senate district 12. Campbell, Cumberland, Fentress, Meigs, Morgan, Rhea and Scott Counties.

(13) Senate district 13. Bledsoe, Clay, Dekalb, Jackson, Overton, Pickett, Putnam, Sequatchie, Van Buren and White Counties.

(14) Senate district 14. Coffee, Franklin, Grundy, Marion and Warren Counties.

(15) Senate district 15. Macon, Smith, Sumner, Trousdale and Wilson Counties.

(16) Senate district 16. Bedford, Cannon, Lincoln, Moore and Rutherford Counties.

(17) Senate district 17. Giles, Lawrence, Marshall, and Maury Counties.

(18) Senate district 18. That portion of Davidson County lying within councilmanic districts 3, 4, 6, 7, 8, 9, 10 and 11, and 2nd, 3rd, and 4th precincts of councilmanic district 1, and the 5th precinct of councilmanic district 5.

(19) Senate district 19. That portion of Davidson County lying within councilmanic districts 2, 17, 18, 19, 20, 21 and 27, the 1st precinct of councilmanic district 1, the 1st, 2nd, 3rd and 4th precincts of councilmanic district 5, the 2nd precinct of councilmanic district 26, and the 1st and 2nd precincts of councilmanic district 28.

(20) Senate district 21. That portion of Davidson County lying within councilmanic districts 12, 13, 14, 15, 16, 29, 30 and 31, and the 3rd, 4th, 5th, and 6th precincts of councilmanic district 28.

(21) Senate district 21. That portion of Davidson County lying within councilmanic districts 22, 23, 24, 25, 32, 33, 34 and 35, and the 1st and 3rd precincts of councilmanic district 26.

All references to councilmanic districts of Davidson County contained herein are to those districts as established as of March 1, 1972.

(22) Senate district 22. Cheatham, Houston, Montgomery, Robertson and Stewart Counties.

(23) Senate district 23. Benton, Dickson, Hickman, Humphreys, Lewis, Perry, Wayne and Williamson Counties.

(24) Senate district 24. Carroll, Henry, Lake, Obion and Weakley Counties.

(25) Senate district 25. Gibson and Madison Counties.

(26) Senate district 26. Chester, Decatur, Fayette, Hardeman, Hardin, Henderson and McNairy Counties.

(27) Senate district 27. Crockett, Dyer, Haywood, Lauderdale and Tipton Counties.

(28) Senate district 28. That portion of Shelby County lying within the Shelby County voting districts of McConnell and Woodstock and the following voting precincts of Memphis: 21-2, 21-3, 27-2, 39, 40-1, 40-2, 41-1, 41-2, 41-3, 42-1, 42-2, 43-1, 43-2, 43-3, 43-4, 52-1, 52-2, 52-3, 53-2, 62, 69-1, 69-2, 70-1, 70-2, 71-1, 71-2, 72-1, 72-3, 72-4.

(29) Senate district 29. That portion of Shelby County lying within the following voting precincts of Memphis: 1, 2, 5, 7, 12, 22, 23, 24, 11-1, 11-2, 14-1, 14-2, 13-1, 13-2, 13-3, 25-1, 25-2, 25-3, 26-2, 31-3, 31-4, 34-1, 34-2, 35-1, 35-2, 35-3, 49-1, 50-1 and 50-2.

(30) Senate district 30. That portion of Shelby County lying within the following voting precincts of Memphis: 16-1, 16-2, 16-3, 17-1, 17-2, 17-3, 17-4, 20-1, 20-2, 20-3, 21-1, 26-1, 27-1, 30, 31-2, 31-1, 32, 33, 36-1, 36-2, 36-3, 37-1, 37-2, 38-2, 29-1, 29-2, 29-3, 28-1, 28-2, 45-1, 45-2, 45-3, 45-4, 44-4, 44-5, 47-1, 47-2, 47-3, 51, 59-1, 59-2, 59-3, 61-1, 61-2.

(31) Senate district 31. That portion of Shelby County lying within the following voting precincts of Memphis: 38-1, 38-3, 44-1, 44-2, 44-3, 46-1, 46-2, 46-3, 54-1, 54-2, 55-1, 55-2, 56-1, 56-2, 57, 58-1, 58-2, 58-3, 58-4, 58-5, 63-1, 63-2, 64, 65-1, 65-2, 66-1, 66-2, 67-1, 67-2, 68-2, 73-1, 73-2, 73-3, 74-2, 74-3, 74-4, 74-5.

(32) Senate district 32. That portion of Shelby County lying within the following Shelby County voting districts: Arlington, Bartlett, Brunswick, Capleville, Ellendale, Kerrville, Locke, Lucy, Millington, Raleigh, Scenic Hills,

Stewartville, Collierville, Cordova, Eads, Forest Hills, Germantown, Morning Sun, Mullins Ross Store, and the following city of Memphis voting precincts as they existed on July 4, 1973: 53-1, 60-5, 67-3, 68-1, 74-1, 80, 81, 83, 84, 85, 86, 87-1, 87-2, 88-1, 88-2.

(33) Senate district 33. That portion of Shelby County lying within the following city of Memphis voting precincts: 48, 49-2, 60-1, 60-2, 60-3, 60-4, 60-6, 75-1, 75-2, 75-3, 75-4, 75-5, 75-6, 76-1, 76-2, 76-3, 77-1, 77-2, 78-1, 78-2, 78-3, 79-1, 79-2, 79-3, 82-1, 82-2.

All references to the Shelby County wards and precincts contained herein are to those precincts and wards as established as of April 16, 1973, except the transfer from district 32 to district 28 of Memphis voting precinct 53-1 as it existed on July 4, 1973.

All references to enumeration districts are to those districts as so designated in the official 1970 federal census. A reference to a specific enumeration district includes that district in all of its parts although parts thereof may be designated by a letter of the alphabet in addition to its numerical designation.

It is the legislative intent that all senate districts shall be contiguous and, toward that end, if any enumeration or voting district or other geographical entity designated as a portion of a senate district is found to be noncontiguous with the large portion of the senate district it shall be constituted a portion of the senate district smallest in population to which it is contiguous.

A candidate for election to the office of senator shall be required to reside in the senatorial district from which he seeks to be elected for one (1) year immediately preceding the election.

STIPULATION OF POPULATION OF SENATE DISTRICTS

Both appellants and appellee stipulated that the optimum population per senate district in the State of Tennessee is 118,914. The following are the stipulated populations for each district and their stipulated percentage deviations from the average:

Senate District	Population	% Deviation From Average
1	118,705	— .18
2	127,329	+ 7.08
3	113,407	— 4.63
4	131,359	+ 10.47
5	127,046	+ 6.84
6	125,773	+ 5.77
7	119,324	+ 0.34
8	116,251	— 2.24
9	121,292	+ 2.00
10	124,761	+ 4.92
11	129,475	+ 8.88
12	110,173	— 7.35
13	114,130	— 4.02
14	118,041	— .73
15	123,262	+ 3.66
16	120,820	+ 1.60
17	112,582	— 5.32
18	112,714	— 5.21
19	109,925	— 7.56
20	110,471	— 7.10
21	114,767	— 3.49

Senate District	Population	% Deviation From Average
22	118,194	— .61
23	118,546	— .31
24	116,344	— 2.16
25	113,645	— 4.43
26	118,452	— .39
27	112,697	— 5.23
28	124,826	+ 4.97
29	120,969	+ 1.73
30	118,487	— .36
31	121,185	+ 1.91
32	118,016	— .75
33	118,628	— .24

QUESTION PRESENTED

Was the three judge district court correct in concluding the apportionment of the Tennessee State Senate to be unconstitutional and in requiring that the Tennessee State Senate District lines be redrawn, even though such reapportionment would result in the disenfranchisement of Tennessee voters?

STATEMENT OF THE CASE

Statute

In 1972, a three judge panel declared the apportionment statute of the Tennessee Legislature, including the Tennessee Senate, to be unconstitutional. *Kopald v. Carr*, 343 F. Supp. 51 (M.D. Tenn. 1972). That three judge panel allowed the General Assembly of the State of Tennessee time to reapportion itself. If the General Assembly had failed to act by July 1,

1973, then pursuant to its decision, the three judge court would have imposed a court-ordered plan of reapportionment. As a result the Tennessee General Assembly enacted Chapter 403, Tennessee Public Acts of 1973. The court in *Kopald* had required that an attack on this new reapportionment plan be made within thirty (30) days after its signing by the Governor:

"If the General Assembly enacts a plan of reapportionment prior to July 1, 1973, and such plan is not challenged in this case within thirty (30) days after the signing thereof by the Governor, this case will be closed. If, however, no plan is enacted, or, if enacted, is successfully challenged, the court will formulate a reapportionment plan." *Kopald v. Carr, Supra* at 54.

No attack was made upon the new Tennessee State reapportionment plan. T.C.A. Section 3-102, as codified in 1978, is essentially identical to that plan with some subsequent minor amendments. (See footnote 1, p. 2, opinion of the District Court) Chapter No. 649, Tennessee Public Acts of 1974, Chapter No. 255, Tennessee Public Acts of 1975; Chapter No. 723, Tennessee Public Acts of 1976; and Chapter No. 690, Tennessee Public Acts of 1978. In 1979 the Tennessee General Assembly enacted amendments to T.C.A. § 3-102 in order to attempt to comply with the court's order (reproduced as appendix C).¹

The Appellees and Their Claim

All four appellees alleged that they are citizens of the State of Tennessee, having registered to vote after the decisions in *Kopald v. Carr, Supra*. They also alleged that the apportion-

¹ The attached Senate Bill No. 712 was passed by both houses of the General Assembly on May 17, 1979 pursuant to Tennessee law, Article III, see 18 Constitution of Tennessee, said bill will not become law until ten days after its passage or until it is signed by the Governor.

ment of the Tennessee State Senate, established by Tennessee Code Annotated § 3-102, was unconstitutional and that the Tennessee Senate Districts did not meet the "one-man one-vote" test on contemplated by *Baker v. Carr*, 369 U.S. 186 (1962), and *Reynolds v. Sims*, 377 U.S. 533 (1964).

The Opinion of the District Court

The District Court determined that Tennessee Code Annotated Section 3-102 is unconstitutional because it does not "construct districts . . . as nearly of equal population as is practical." (Opinion Page 4.) Appellants presented to the court both in their brief and their oral argument the issue of disenfranchisement of voters. However, the District Court summarily dismissed this argument.

The three judge court held Tennessee Code Annotated Section 3-102 to be unconstitutional and enjoined the appellant from conducting or causing to be conducted elections of State Senators pursuant to its provisions. The court retained jurisdiction of the cause and mandated that it would enact its own apportionment plan if the Tennessee General Assembly failed to enact one prior to June 1, 1979. Attorneys fees were further awarded to the appellee, such award was to be determined and a separate hearing was to be held in the future.

ARGUMENT

This Appeal Presents Substantial Questions of Law Requiring Reversal by This Court of the Order Issued January 15, 1979 by the Court Below.

The Order of the District Court Will Result in Less Equal Representation of the Voter Than if Tennessee Code Annotated Section 3-102 Is Allowed to Remain Valid.

This case is one of a long line of reapportionment cases commencing with *Baker v. Carr*, 369 U.S. 186 (1962). In *Baker*, this court held that federal courts have jurisdiction to determine whether a State legislative apportionment act deprives its citizens of equal protection of the laws in violation of the 14th Amendment to the Constitution of the United States. In 1964 this Court, in *Reynolds v. Sims*, 377 U.S. 533 (1964) declared that population is the starting place for considering legislative apportionment controversies and that the Equal Protection Clause of the United States Constitution requires substantially equal legislative representation for all citizens. Subsequently numerous apportionment cases have been presented to this Court. See *Gaffney v. Cummings*, 412 U.S. 749 (1973); *Mahan v. Howell*, 410 U.S. 315 (1973); *White v. Register*, 412 U.S. 755 (1973); *Wells v. Rockefeller*, 394 U.S. 542 (1969); *Chapman v. Meier*, 420 U.S. 1 (1975). This Court, however, has not ruled on the issues presented here.

Article II, Section 3 of the Constitution of the State of Tennessee provides four-year terms for Tennessee State Senators with only one-half of the Senators elected in each biennial election. This constitutional provisions reads as follows:

"The legislative authority of this State shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives, both dependent on the people.

Representatives shall hold office for two years and *Senators for four years from the day of the general election*, except that the Speaker of the Senate and the Speaker of the House of Representatives each shall hold his office of Speaker for two years or until his successor is selected and qualified, provided however, that in the first general election after the adoption of this amendment *Senators elected in districts designated by even numbers shall be elected for four years and those elected in districts designated by odd numbers shall be elected for two years*. In a county having more than one senatorial district the district shall be numbered consecutively." (Emphasis supplied.)

The Tennessee Constitution further provides that after each decennial census the General Assembly of the State of Tennessee shall reapportion its senatorial districts. In pertinent part Article II, Section 4 of the Constitution of Tennessee reads:

"The apportionment of Senators and Representatives shall be substantially according to populations. After each decennial census made by the Bureau of Census of the United States is available the General Assembly of the State of Tennessee shall reapportion its senatorial districts . . ."

Only one State Senatorial election remains prior to the 1980 decennial census. Pursuant to Article II, Section 3 of the Tennessee Constitution only one-half of the senate districts will be able to elect state senators in that election. Therefore, any reapportionment plan ordered by the court or enacted by the General Assembly would affect only one-half of the Tennessee districts. An entire apportionment must take place after 1980 and therefore in senate districts not holding elections in 1980, elections will never be held pursuant to the district lines drawn pursuant to this court ordered reapportionment.

As a result some individuals could be denied the right to vote for State Senator for a period up to eight years. For instance

consider a hypothetical county A contained in senate district two. Senate district two normally conducts an election in 1980; its last election having been conducted in 1976. However, if the plan moves the citizens of county A to senate district 1 an election would not be conducted in county A until 1982. If the General Assembly so chooses to move county A back to Senate district two after its 1980 reapportionment, then county A citizens would be unable to vote until 1984, thereby allowing eight years to pass before the citizens of county A can vote for a State Senator.

Reproduced herein as appendix C is a statute recently enacted by the Tennessee General Assembly in response to the court order. Pursuant to this legislation territory in even-numbered senatorial districts have been transferred to odd-numbered senatorial districts, thereby disenfranchising individuals who normally would have voted in 1980, and possibly disenfranchising such individuals until 1984. (Only Senators in even-numbered districts stand for election in 1980.)

Senatorial District	Added Area	From Senatorial District
3	Sullivan County 14 Magisterial District 14 Councilmanic District	3
5	Knoxville ward: SH 19	6
7	Loudon County: Glendale precinct	8

Senatorial District	Added Area	From Senatorial District
	Knoxville wards: East 17, West 17 FH 19	
9	Blount County Meigs County Magisterial District 1, 2, 3, 4	8 12
13	Fentress County, Scott County: Magisterial District 4, 6, 7	12
17	Lincoln County Bedford County	16 16
19	Davidson County: Councilmanic District 6-1	18
25	Henderson County: Magisterial District 1, 3, 4	26
27	Shelby County districts: Stewartsville, Arlington, Brunswick (Lakeland) Kerrville, Eads	32
29	Memphis wards: 27-2 (3100) 39 (4340)	28

While the appellants admit that the population deviations in the pre-1979 apportionment plan do not strictly conform

to "one-man one-vote", the appellants insist that pursuant to this Court's prior rulings the above disenfranchisement creates a relative factor to be considered. This Court in *Gaffney v. Cummings*, *Supra* at 39 stated:

"There are other relevant factors to be taken into account and other important interests that states may legitimately be mindful of. An unrealistic over-emphasis on raw population figures, a new nose count in the districts, may submerge these other considerations and itself furnish a ready tool for ignoring factors that day-to-day operation are important to an acceptable representation

and apportionment arrangement.

Nor is the goal of fair and effective representation furthered by making the standards of reapportionment so difficult to satisfy that the reapportionment task is recurrently removed from legislative hands and performed by federal courts which themselves must make the political decisions necessary to formulate a plan or accept those made by reapportionment bodied in the original plan. From the very outset, we recognize that the apportionment task dealing as it must with fundamental choices about the nature of representation, is primarily a political and legislative process. We doubt that the 14th Amendment requires repeated displacement of other appropriate state decision making in the name of essentially minor deviations from perfect census-population equality that no one, with confidence, can say would deprive any person a fair and effective representation in his state legislation." (Citations omitted.)

See also *Mahan v. Howell*, *Supra*; *Dush v. Davis*, 387 U.S. 112 (1967); *Sailors v. Board of Education*, 387 U.S. 105 (1967); *Burns v. Richardson*, 384 U.S. 73 (1972).

Therefore pursuant to *Gaffney*, factors other than population deviation are to be considered in determining whether legisla-

tive districts are mal-apportioned. The disenfranchisement of voters resulting from any reapportionment at this late date is clearly such an additional factor. The discrimination resulting from such apportionment is even more invidious than any possible discrimination arising from the pre-1979 status of the Tennessee State. The three judge court has thus disenfranchised the voters of the State of Tennessee and created a more unconstitutional situation than if T.C.A. § 3-102, as codified in 1978, were allowed to remain valid. Therefore, appellants submit that the order of the three judge court below should be reversed.

CONCLUSION

The above premises considered, this court should note probable jurisdiction and summarily reverse the order of the court below, dated January 15, 1979 or, in the alternative, should grant plenary consideration to the instant appeal.

Respectfully submitted,

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Deputy Attorney General

WILLIAM W. HUNT, III
Assistant Attorney General

Certificate of Service

I hereby certify that a true and exact copy of the foregoing brief has been forwarded to John L. Ryder, Esq., Laughlin, Halle, Regan, Clark & Gibson, 2201 First Tennessee Bank Bldg., Memphis, Tennessee 38103, on this the 25th day of May, 1979.

William W. Hunt, III

APPENDIX

— A-1 —

APPENDIX A

United States District Court for the
Middle District of Tennessee
Nashville Division

Richard Mader, Patricia Mae Norton,
Mary Richardson, Marsena Darlene
Walker

vs.

Gentry Crowell, Secretary of State of
the State of Tennessee; Ray Blanton,
Governor of the State of Tennessee,
Brooks McLemore, Attorney Gen-
eral of the State of Tennessee, David
Collins, Coordinator of Elections
of the State of Tennessee; and James
E. Harpster, Jack C. Seaton, Tommy
Powell, Richard Holcomb, and Lytle
Landers, Commissioners of the State
Board of Elections

No. 78-3079-NA-CV

(Filed January 15, 1979)

Before: PHILLIPS, Chief Circuit Judge, BROWN, Chief
District Judge, and MORTON, Chief District Judge.

PER CURIAM.

Plaintiffs in this class action are Tennessee voters seeking reapportionment of the state senatorial districts, which they allege are unconstitutionally apportioned pursuant to Tennessee Code Annotated section 3-102. The suit is brought pursuant to 42 U.S.C. §§ 1983 and 1988, and jurisdiction is conferred

upon this court by 28 U.S.C. § 1343(3). A panel of three judges was designated pursuant to 28 U.S.C. § 2284. The court finds that this cause meets the requirements for a class action set out in Rule 23 of the Federal Rules of Civil Procedure.

Plaintiffs assert that the present plan of apportionment of state senatorial districts violates the one person, one vote mandate of *Baker v. Carr*, 369 U.S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962), and *Reynolds v. Sims*, 377 U.S. 533, 84 S. Ct. 1392, 12 L. Ed. 2d 506 (1964). This plan was enacted by the Tennessee General Assembly in 1973 after two prior plans (a primary plan and an alternate plan) had been declared unconstitutional in *Kopald v. Carr*, 343 F. Supp. 51 (M.D. Tenn. 1972). Because there was not time after the *Kopald* decision for the legislature to enact a new plan before the 1972 elections, the court ordered that its own plan, a modified version of the General Assembly's alternate version, be used for those elections only. The court recognized, however, that legislative apportionment is primarily and properly a legislative function, *id.* at 53, and stated:

If the General Assembly enacts a plan of reapportionment prior to July 1, 1973, and such plan is not challenged in this case within thirty (30) days after the signing thereof by the Governor, this case will be closed. If, however, no plan is enacted, or, if enacted, is successfully challenged, the court will formulate a reapportionment plan.

Id. at 54. As indicated above, the General Assembly responded by enacting the plan that is basically still in effect.¹

¹ With the exception of the so-called "Gillock Amendment," which was held unconstitutional in *Browner v. Crowell*, 434 F. Supp. 1119 (1977), amendments to the plan since 1973 were enacted when precinct configurations or designations were altered, necessitating changes in the descriptions of senatorial districts in order to maintain the district lines as originally enacted.

Counsel for defendants argues that plaintiffs are barred by laches, asserting that the *Kopald* court "stated that an attack on the reapportionment would be barred if plaintiffs did not challenge [the General Assembly's] plan within 30 days," Defendants' Reply Brief and Argument, filed November 3, 1978, at 3. This overstates the *Kopald* decision, which provided that that case would be closed if no challenge promptly appeared. The present individual plaintiffs were not registered voters at that time and so were not members of the *Kopald* plaintiff class. It is stipulated that each of the individual plaintiffs registered to vote in Tennessee for the first time in 1975 or later. Each was only eligible to vote in one major election before filing this suit, and thus plaintiffs are not guilty of laches. Any considerations of finality of judgment or of the desirability of maintaining a stable apportionment scheme are outweighed by the importance of plaintiffs' rights to vote and to have their votes count equally with those of other voters throughout the state.

The following facts pertinent to the merits of this case are stipulated:

(1) Population figures are based on the 1970 Federal Decennial Census.

(2) 1970 census population figures for voting precincts are interpolations prepared by the Office of Legal Services of the Tennessee General Assembly and derived in part from local authorities.

(3) The optimum population per senatorial district based on the 1970 census is 118,914 (total Tennessee population of 3,924,164 divided by 33 districts).

(4) The gross maximum deviation from the optimum under Tennessee Code Annotated section 3-102 is 18.03 percent, being the total of the greatest positive deviation, +10.47 percent (Senate District 4, population 131,356), and the greatest nega-

tive deviation, —7.56 percent (Senate District 19, population 109,925).²

Senate District Senate District	Population Population	Deviation Deviation
1	118,705	— .18
2	127,329	+ 7.08
3	113,407	— 4.63
4	131,359	+ 10.47
5	127,046	+ 6.84
6	125,773	+ 5.77
7	119,324	+ 0.34
8	116,251	— 2.24
9	121,292	+ 2.00
10	124,761	+ 4.92
11	129,475	+ 8.88
12	110,173	— 7.35
13	114,130	— 4.02
14	118,941	— .73
15	127,329	+ 3.66
16	120,820	+ 1.60
17	112,582	— 5.32
18	112,714	— 5.21
19	109,925	— 7.56
20	110,471	— 7.10
21	114,767	— 3.49
22	118,194	— .61
23	118,546	— .31
24	116,344	— 2.16
25	113,645	— 4.43
26	118,452	— .39
27	112,697	— 5.23
28	124,826	+ 4.97
29	120,969	+ 1.73
30	118,487	— .36
31	121,185	+ 1.91
32	118,016	— .75
33	118,628	— .24

It is the opinion of this court that Tennessee Code Annotated section 3-102 is unconstitutional because it does not

² The following table, stipulated in this case, lists each senate district and its percentage deviation from the optimum:

“construct districts . . . as nearly of equal population as is practicable.” *Reynolds v. Sims*, *supra*, 377 U.S. at 577. The practicality of smaller deviations was demonstrated when the 1972 elections were held pursuant to the *Kopald* plan, under which the variance from the optimum was below four percent. See *Kopald v. Carr*, *supra*, 343 F. Supp. at 53. It is true that sizable deviations have been allowed where such variations are justified by “legitimate considerations incident to the effectuation of a rational state policy.” See, e.g., *Mahan v. Howell*, 410 U.S. 315, 325, 93 S. Ct. 979, 35 L. Ed. 2d 320 (1973) (quoting *Reynolds v. Sims*, *supra*, 377 U.S. at 579). In *Mahan*, the court upheld a deviation of 16.4 percent where it was found to be in furtherance of the state’s “policy of maintaining the integrity of political subdivision lines.” *Id.*, 410 U.S. at 325.

It is clear that the burden is on the state to prove a policy justification for the deviations complained of in the instant case. In *Wells v. Rockefeller*, 394 U.S. 542, 89 S. Ct. 1234, 22 L. Ed. 2d 535 (1969), the Supreme Court held that the burden is on the proponent of a districting plan to justify deviations. *Id.*, 394 U.S. at 544. Concededly, this principle was significantly qualified in *Gaffney v. Cummings*, 412 U.S. 735, 93 S. Ct. 2321, 37 L. Ed. 2d 298 (1973), which emphasized that stricter standards must be applied to congressional districting such as was involved in *Wells* than to districting for state legislative bodies, and which held that “minor deviations from mathematical equality among state legislative districts are insufficient to make out a prima facie case of invidious discrimination under the Fourteenth Amendment so as to require justification by the State.” *Id.*, 412 U.S. at 745. The *Gaffney* Court indicated that deviations from the optimum district size may be categorized into three groups: those “too great to be justified by any state interest,” “minor deviations” not calling for state justification, and, most significant for the case at bar, deviations “sufficiently large to require justification.” *Id.* The case cited by the court as an example of this intermediate group

was *Mahan v. Howell*, *supra*, with its maximum deviation of 16.4 percent. The finding in *Mahan* was based on facts offered by the state, and the court noted that in *Swann v. Adams*, 385 U.S. 440, 87 S. Ct. 569, 17 L. Ed. 2d 501 (1967), a large deviation was disapproved where the state "offered no evidence at the trial level to support the challenged variations. . . ." *Mahan*, *supra*, 410 U.S. at 328.

The 18.03 percent variance now at issue certainly falls in the *Mahan* category, yet in this case, unlike *Mahan*, no justification has been proved by the state. Although defendants point out that Article 2, section 6 of the Tennessee Constitution "prefers districts that contain whole contiguous counties," (Defendants' Reply Brief and Argument, filed November 3, 1978, at 7), defendants have failed to indicate how the plan under attack furthers this preference or even that the preference rises to the level of an established state policy. Tennessee Code Annotated section 3-102 creates a number of districts that cut across county lines, and several of these districts deviate markedly from the optimum. Although *Mahan* teaches that other policy considerations might justify exceptions to a general policy of observing existing political boundaries, no such justifications have been identified for the noncontiguous districts now existing in this state.

It having been demonstrated that Tennessee senatorial districts with substantially smaller deviations from the optimum are practicable and that the magnitude of the variations created by the present plan is without justification, this court holds that Tennessee Code Annotated section 3-102 is unconstitutional. Defendants are enjoined from conducting or causing to be conducted any primary or general election of state senators pursuant to its provisions. The court will retain jurisdiction of this cause, and if the Tennessee General Assembly has not enacted a constitutional scheme of apportionment of state senatorial districts prior to June 1, 1979, the court will reinstate the

Kopald plan³ or will effectuate such other plan as may be presented to the court that surpasses the *Kopald* plan in achieving the ideal of one person, one vote.

Plaintiffs seek attorney fees pursuant to 42 U.S.C. § 1988, as amended by the Civil Rights Attorney's Fee Awards Act of 1976, which provides in pertinent part:

In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, . . . the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

It is the opinion of this court that such a fee should be awarded in this case. A separate hearing will be held to determine the amount to be so awarded.

An appropriate order will be entered.

For the Court:

/s/ L. CLURE MORTON
Chief District Judge

³ If it becomes necessary for the court to impose the *Kopald* plan, any modifications required by changes in the configurations or designations of voting precincts used to define the districts in that plan will, of course, be made.

ORDER

In accordance with the memorandum contemporaneously filed, it is hereby ORDERED that:

(1) Tennessee Code Annotated section 3-102, State senatorial districts—Residence requirements, is declared unconstitutional;

(2) Defendants and their successors in office are enjoined from conducting or causing to be conducted any primary or general election pursuant to the provisions of Tennessee Code Annotated 3-102;

(3) The court retains jurisdiction of this action, and in the event no constitutional plan of apportionment of Tennessee senatorial districts is enacted by the General Assembly by June 1, 1979, this court will impose a plan of apportionment;

(4) A reasonable attorney's fee will be awarded as part of the costs taxed to defendants, and a hearing to determine the amount of said fee will be held on a date to be determined.

For the Court:

/s/ L. CLURE MORTON
Chief District Judge

ORDER AMENDING MEMORANDUM

In accordance with the **Amendment to Stipulation** filed by the parties to this cause on May 1, 1979, it is hereby ORDERED that this Court's memorandum opinion entered January 15, 1979, be amended as follows: In footnote 2 of said memorandum, the population listed for Senate District 14 shall be changed from 118,941 to 118,041, and the population listed for Senate District 15 shall be changed from 127,329 to 123,262.

FOR THE COURT:

/s/ L. CLURE MORTON
Chief District Judge

ORDER

Before PHILLIPS, Senior Circuit Judge, BROWN, Chief District Judge, and MORTON, Chief District Judge.

On January 15, 1979, this court entered an order enjoining the defendants and their successors in office from conducting any primary or general election for State Senator pursuant to the provisions of T.C.A. § 3-102 pending further order of the court.

The plaintiffs and defendants through their attorneys of record, have filed a joint petition that the order of January 15, 1979, be modified, so as to exempt therefrom the holding of a special primary election on March 1, 1979, and a special general election on April 17, 1979, for State Senator from the Eighteenth Senatorial District to fill the vacancy created by the resignation of former State Senator Bill Boner, now a member

of the House of Representatives of the Congress of the United States. Said special primary and general election were scheduled pursuant to Writs of Election issued by the Governor of Tennessee on January 5, 1979.

Upon consideration, it is ORDERED that the relief sought by the joint petition be granted and that the order of this court entered January 15, 1979, be and hereby is amended by adding at the end of paragraph (2) thereof the following:

Provided, however, that there is exempted from the injunction issued pursuant to this paragraph the special primary and general elections previously scheduled to fill a vacancy in the office of State Senator for the Eighteenth Senatorial District.

For the court:

/s/ HARRY PHILLIPS
Senior Circuit Judge

Approved for Entry:

/s/ JOHN L. RYDER

Counsel for Plaintiffs

/s/ WILLIAM W. HUNT III

Assistant State Attorney General
Counsel for Defendants

APPENDIX B

United States District Court for the
Middle District of Tennessee
Nashville Division

Richard Mader, et al.,

v.

Gentry Crowell, Secretary of State of
the State of Tennessee; et al.

} No. 78-3079-NA-CV

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that the above-named defendants hereby appeal to the Supreme Court of the United States from the order entered in this action on January 15, 1979. This appeal is taken pursuant to 28 U.S.C. Sec. 1253.

Respectfully submitted,

/s/ WILLIAM W. HUNT, III
Assistant Attorney General

Certificate of Service

I hereby certify that a true and exact copy of the foregoing has been mailed to John L. Ryder, Esq., 201 First Tennessee Bank Building, Memphis, Tennessee 38103 this 14th day of February 1979.

/s/ William W. Hunt, III
Assistant Attorney General

APPENDIX C

SENATE BILL NO. 712

By Hamilton, Crouch, Mr. Speaker Wilder

Substituted for: House Bill No. 604

By Burnett (Fentress)

AN ACT To amend Tennessee Code Annotated, Section 3-102, relative the reapportionment of the State Senate.

WHEREAS, It is the intent of the General Assembly of the State of Tennessee to equitably apportion itself with due consideration to Sections 5 and 6 of Article II of the Tennessee Constitution and the Fourteenth Amendment to the United States Constitution; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 3-102, is amended by deleting the section in its entirety and substituting in lieu thereof the following:

State Senatorial Districts-Residence Requirements.—Until the next enumeration of qualified voters and apportionment of senators, the state senatorial districts shall be composed as follows:

All subdistrict lines cited in the following descriptions are those in effect as of May 1, 1979, unless otherwise noted.

(1) Senate District 1. Carter and Johnson Counties and that portion of Washington County which is not established as a portion of Senate District 3, as set out hereinafter.

(2) Senate District 2. All of Sullivan County except voting precincts 14 MP and 14 CH.

(3) Senate District 3. Greene, Hawkins, Unicoi Counties, Sullivan County voting precincts 14 MP and 14 CH, that portion of Washington County lying within the Sulphur Springs census division and the Telford census division, and Hancock County magisterial districts 5, 6, 7, 8, 9, 10 and 12.

(4) Senate District 4. Grainger, Hamblen, Jefferson, Cocke and Union Counties, Hancock County magisterial districts 1, 2, 3, 4 and 11, and Claiborne County magisterial districts 3 and 4.

(5) Senate District 5. Anderson County, the following voting wards of the City of Knoxville: SH 19, 36, 37, 38, 39, 40 and 41, and the following voting precincts of Knox County: Corryton, Dante, Fort Sumpter, Gibbs, Brickey, Heiskell, Hills, Pedigo, Halls, Powell, Karns and Solway.

(6) Senate District 6. The following voting precincts of Knox County: Huffs, Sunnyview, Ramsey, Riverdale, Dora Kennedy, Ellistown, Maloneyville, Shannondale, Ritta, Skaggston, Carter, Thorngrove, Kings, Mount Olive, Rocky Hill, Sevier Homes, Vestal, Gap Creek and Hopewell, and the following voting wards of the City of Knoxville: 13, Middle 14, East 14, East 15, West 15, South 16, North 16, FH 25, 25 Vestal, East 26, West, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 49.

(7) Senate District 7. The following voting precincts of Knox County: Lonas, Hardin Valley, Concord, Farragut, Cedar Bluff, Bluegrass and Ball Camp, the following voting wards of the City of Knoxville: 1, 6, 7, 8, 9, North 10, South 10, East 11, Middle 11, West 11, 12, East 17, West 17, 18, FH 19, 20, 21, 22, South 23, North 23, South 24, North 24, Seq. 24, 42, 43, 44, 45, 46, 47, 48, North 50, South 50 and 51, the Glendale precinct

of Loudon County, and the following precincts of Blount County: Binfield, Maryville E. College, Maryville Jr. High, Fairview City, Fairview, Friendsville City, Friendsville, Miser Station, Alcoa High School, Louisville School and Mentor.

(8) Senate District 8. Sevier and Monroe Counties, all of Blount except that in Senate District 7, and all of Loudon County except that in Senate District 7.

(9) Senate District 9. Bradley, Polk and McMinn Counties, Meigs County magisterial districts 1, 2, 3 and 4, and the following voting precincts of Hamilton County: Bakewell, Dallas, Lakesite, Middle Valley, Mowbray, Sale Creek and Soddy Daisy North.

(10) Senate District 10. The following Hamilton County voting precincts: Airport, Alton Park, Amnicola, Avondale, Bushtown, City Hall, Court House, Downtown, Dupont, Eastdale, Falling Water, Glenwood, Howard, Lupton City, Moccasin Bend, Mountain Creek, North Chattanooga, North Woods, Orchard Knob, Piney Woods, Riverview, St. Elmo, Stuart Heights, Valdeau City, Valley View City, Wauhatchie City, Fairmount, Falling Water County, Lookout Mountain, Red Bank 1, Red Bank 2, Red Bank 3, Red Bank 4, Signal Mountain East, Signal Mountain West, Soddy Daisy South, Valdeau County, Valley View County, Walden and Wauhatchie County.

(11) Senate District 11. The following Hamilton County voting precincts: Bonny Oaks, Brainerd, Brainerd Hills, Cedar Hills, Clifton Hills, Concord, East Brainerd, East Chattanooga, East Lake, East Side, Eastgate, Highland Park, Hixon, Kingpoint, Lake Hills, Missionary Ridge, Murray Hills, Northgate, Ridgedale, Sunnyside, Tyner, Woodmore, Apison, Birchwood, Collegedale, East Ridge 1, East Ridge 2, East Ridge 3, East Ridge 4, East Ridge 5, Harrison, Meadowview, Ooltewah, Ridgeside, Snowhill and Westview.

(12) Senate District 12. Cumberland, Morgan and Campbell Counties, all of Roane County except Glen Alice, Fairview, Midway, Paint Rock, Renfro and Johnson School House precincts of Roane County, all of Claiborne County except that portion in Senate District 4, and Scott County magisterial districts 1, 2, 3 and 5.

(13) Senate District 13. Putnam, Jackson, Clay, Overton, Pickett, Fentress, White, DeKalb and Van Buren Counties, and Scott County magisterial districts 4, 6 and 7.

(14) Senate District 14. Bledsoe, Rhea, Sequatchie, Marion, Warren and Franklin Counties, Meigs County magisterial district 5, all of Grundy County except magisterial district 3, and that portion of Roane County lying in the Glen Alice, Fairview, Midway, Paint Rock, Renfro and Johnson School House precincts.

(15) Senate District 15. Sumner, Macon, Trousdale and Smith Counties, and Wilson County except magisterial districts 2, 11, 13 and 16.

(16) Senate District 16. All of Moore, Rutherford, Cannon and Coffee Counties, magisterial district 3 of Grundy County, and that part of Lincoln County not included in Senate District 17.

(17) Senate District 17. All of Marshall, Giles, Maury and Bedford Counties, and that portion of Lincoln County in magisterial districts 1, 2, 4 and the Howell Hill and Lincoln precincts of magisterial district 8.

(18) Senate District 18. That portion of Davidson County lying within councilmanic districts 3, 4, 7, 8, 9, 10 and 11, the 2nd, 3rd, 4th, 5th and 6th precincts of councilmanic district 1, the 1st precinct of councilmanic district 5, the 2nd and 3rd precincts of councilmanic district 6, and the 1st and 4th precincts of councilmanic district 22.

(19) Senate District 19. That portion of Davidson County lying within councilmanic districts 2, 17, 18, 19, 20 and 21, the 1st precinct of councilmanic district 1, the 2nd, 3rd and 4th precincts of councilmanic district 5, the 1st precinct of councilmanic district 6, the 1st and 2nd precincts of councilmanic district 26, the 1st, 2nd and 3rd precincts of councilmanic district 27 and the 1st precinct of councilmanic district 28.

(20) Senate District 20. That portion of Davidson County lying within councilmanic districts 12, 13, 14, 15, 16, 29, 30 and 31, the 2nd, 3rd and 4th precincts of councilmanic district 28, and the 5th precinct of councilmanic district 32, and Wilson County magisterial districts 2, 11, 13 and 16.

(21) Senate District 21. That portion of Davidson County lying within councilmanic districts 23, 24, 33, 34 and 35, the 2nd precinct of councilmanic district 22, the 1st, 2nd, 3rd, 4th and 5th precincts of councilmanic district 25, the 3rd precinct of councilmanic district 26, the 5th precinct of councilmanic district 27, and the 1st, 2nd, 3rd and 4th precincts of councilmanic district 32, Cheatham County magisterial districts 6 and 7, and Dickson County except magisterial districts 2 and 7.

(22) Senate District 22. Montgomery, Robertson, Stewart and Houston Counties, Cheatham County magisterial districts 1, 2, 3, 4 and 5, and Humphreys County magisterial districts 1, 2 and Plant precinct of magisterial district 4.

(23) Senate District 23. Hickman, Williamson, Lewis, Lawrence and Benton Counties, Humphreys County except magisterial districts 1 and 2 and Plant precinct of magisterial district 4, Dickson County magisterial districts 2 and 7, and Wayne County except Beech Creek voting precinct.

(24) Senate District 24. Lake, Obion, Weakley, Henry and Carroll Counties and the following portions of Dyer County: Bogota and 5th consolidated precincts of magisterial district D.

(25) Senate District 25. Madison and Gibson County and Henderson County magisterial districts 1 and 3.

(26) Senate District 26. Fayette, Hardeman, McNairy, Hardin, Chester, Perry and Decatur Counties, Henderson County except magisterial districts 1 and 3, and Beech Creek voting precinct of Wayne County.

(27) Senate District 27. Tipton, Haywood, Lauderdale and Crockett Counties, Dyer County except the following portions: Bogota and 5th consolidated precincts of magisterial district D, and that portion of Shelby County lying within the following Shelby County voting districts: Stewartsville, Arlington, Brunswick, Kerrville, Lakeland and Eads.

(28) Senate District 28. That portion of Shelby County lying within the Shelby County voting districts of McConnell and Woodstock and the following voting precincts of Memphis: 21-2, 21-3, 40-1, 40-2, 41-1, 41-2, 41-3, 42-1, 42-2, 43-1, 43-2, 52-1, 52-2, 52-3, 53-1, 53-2, 53-3, 62-1, 62-2, 69-1, 69-2, 70-1, 70-2, 70-3, 71-1, 71-2, 71-3, 72-1, 72-2, 72-3, 72-4, 72-5, 72-6.

(29) Senate District 29. That portion of Shelby County lying within the following voting precincts of Memphis: 1, 2, 7, 11-1, 11-2, 12, 13-1, 13-2, 13-3, 14-1, 14-2, 15, 18, 22, 25-1, 25-2, 25-3, 26-1, 27-1, 27-2, 27-3, 32, 34-2, 35-1, 35-2, 35-3, 39, 49-1 50-1, 51.

(30) Senate District 30. That portion of Shelby County lying within the following voting precincts of Memphis: 16-1, 16-2, 16-3, 17-1, 17-2, 20-1, 20-2, 20-3, 21-1, 28-1, 28-2, 29-1, 29-2, 30, 31-1 31-2, 31-3, 31-4, 33, 36-1,

36-2, 36-3, 37, 38-2, 44-4, 44-5, 45-1, 45-3, 45-4, 47-1, 47-2, 47-3, 45-2, 59-1, 59-2, 59-3, 61-1, 61-2.

(31) Senate District 31. That portion of Shelby County lying within the following voting precincts of Memphis: 38-1, 38-3, 44-1, 44-2, 44-3, 46-1, 46-2, 46-3, 54-1, 54-2, 55-1, 55-2, 56-1, 56-2, 57, 58-1, 58-2, 58-3, 58-4, 58-5, 63-1, 63-2, 64-1, 64-2, 65-1, 65-2, 66-1, 66-2, 67-1, 67-2, 68-2, 68-3, 73-1, 73-2, 73-3, 73-4, 73-5, 74-2, 74-3, 74-4, 74-5, 74-7, 74-8, 74-9.

(32) Senate District 32. That portion of Shelby County lying within the following Shelby County voting districts: Bartlett 1, Bartlett 2, Bartlett 3, Bartlett 4, Capleville, Collierville 1, Collierville 2, Cordova, Forest Hills, Germantown 1, Germantown 2, Germantown 4, Germantown 5, Germantown 6, Germantown 7, Hickory Hill, Locke, Lucy, Millington 1, Millington 2, Morning Sun, Mullins, Ross Store, and the following City of Memphis voting precincts: 60-2, 60-5, 60-7, 67-3, 68-1, 73-6, 74-1, 74-6, 78-5, 79-6, 80, 81-1, 81-2, 81-3, 81-4, 83, 84, 85, 86, 87-1, 87-2, 87-3, 88-1, 88-2, 89-1, 89-2, 90-1, 90-2.

(33) Senate District 33. That portion of Shelby County lying within the following City of Memphis voting precincts: 26-2, 34-1, 48, 49-2, 50-2, 60-1, 60-3, 60-4, 60-6, 60-8, 75-1, 75-2, 75-3, 75-4, 75-5, 75-6, 75-7, 75-8, 76-1, 76-2, 76-3, 76-4, 76-5, 77-1, 77-2, 77-3, 78-1, 78-2, 78-3, 78-4, 79-1, 79-2, 79-3, 79-4, 79-5, 82-1, 82-2, 82-3.

All references to enumeration districts are to those districts as so designated in the official 1970 federal census. A reference to a specific enumeration district includes that district in all of its parts although parts thereof may be designated by a letter of the alphabet in addition to its numerical designation.

It is the legislative intent that all senate districts shall be contiguous and, toward that end, if any enumeration

or voting district or other geographical entity designated as a portion of a senate district is found to be non-contiguous with the larger portion of the senate denate district, it shall be constituted a portion of the senate district smallest in population to which it is contiguous.

SECTION 2. A candidate for election to the office of senator shall be required to reside in the senatorial district from which he seeks to be elected for one (1) year immediately preceding the election.

SECTION 3. Senators and representatives elected to the Ninety-first General Assembly shall, until the next general election of members of the General Assembly, represent their respective districts as constituted prior to the effective date of this act. At the November, 1980, general election and thereafter until changed by law, senators and representatives shall be elected to represent districts as provided in this act.

However, nothing herein shall be construed as depriving any member of the Senate of the Ninety-first General Assembly of his office or as affecting or modifying the requirements of staggered senatorial terms or any other provisions of Article II, Section 3 of the Constitution of Tennessee, and those senators elected in districts designated by odd numbers in the General Election of 1978 shall continue to represent their respective districts as constituted both before and after the effective date of this act, until the election of their successors at the November, 1982 general election.

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 5. This act shall take effect on becoming law, the public welfare requiring it.